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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Richard G. Rebh

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EXAMINER

DINH, DUC Q

ART UNIT

PAPER NUMBER

2674

DATE MAILED: 02/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/965,963	Applicant(s) REBH, RICHARD G.	
	Examiner DUC Q. DINH	Art Unit 2674	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 75-92 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 75-92 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6-9-04, 11-28-04, 12-7-05</u> | 6) <input type="checkbox"/> Other: _____ |

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 75-92 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-71 of copending Application No. 09/965,962. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are claims duplicated subject matter and for the reason set forth below.

Claim 75 of the present Application 09/965,963	Claim 70 of the copending Application Number 09/965,962
An advertising system, comprising: a sensor; an output device for generating sound;	An information conveying system comprising: An electroluminescent display; a speaker
a floor display that conveys marketing information for a product that is proximal to the floor display;	at least one motion sensor;

a memory comprising instructions for generating sound from the output device; and	a memory comprising instructions for illuminating the electroluminescent display; and for creating a sound to be broadcast by the speaker; and
a controller, that is in electrical connection with the output device, the controller executing the memory instruction in response to a signal generated by the sensor.	a controller, that is in electrical connection with the display, the sensor and the memory, the controller executing the memory instructions in response to a motion sensed signal from the sensor to illuminate a first pattern on the electroluminescent display and to broadcast a first sound through the speaker in response to the signal.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented. It would have been obvious for one of ordinary skill in the art at the time of the invention was made to use electroluminescent of the Copending Application as the floor display for the Present Application.

This is the only example comparison between claim 75 of the present application and claim 70 of copending application, similar comparisons are applied to other claims of the present application and the copending application.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 75-79 and 81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Long (U. S. Patent No. 5, 793,281) in view of Gillespie (U.S Patent No. 6,250,001)

In reference to claim 75, Long discloses an apparatus for advertising comprising: a sensor (14, 16A, 16B); an output device (30,32) for generating sound; a memory (ROM, RAM of controller 24) comprising instruction for generating sound from the output device; a controller (24) in electrical connection with the output device (30, 32), the controller executing the memory instructions in response to a signal generated by the sensor (14; col. 3, lines 1-33).

Accordingly, Long discloses everything except a floor display that conveys marketing information for a product that is proximal to the floor display.

Gillespie discloses a floor display that conveys marketing information for a product that is proximal to the floor display (col. 1, lines 22-31).

It would have been obvious for one of ordinary skill in the art at the time of the invention to recognize the concept of using a floor display that conveys marketing information for a product that is proximal to the display as taught by Gillespie is well known and widely accepted as an enhancement to a retail store for increasing sale of production (col. 1, lines 21-29).

In reference to claim 76, Long discloses the sensor 14 is a motion sensor (col. 2 , lines 45-47).

In reference to claim 77, Long discloses memory instructions comprising instructions for generating a first sound output and instruction for generating second sound output (col.3, lines 53-62).

In reference to claim 78, Long discloses the controller executes the instructions for generating the first sound output in response to a first signal from the sensor and executes the instructions for generating the second sound output in response to a second signal from the sensor (col. 4, lines 66-67).

In reference to claim 79, Long discloses the controller executes the instructions for generating a the first sound output in response to a first signal from the sensor and executes the instruction for generating the second sound output signal in response to a second signal from the sensor (col. 4, lines 55-67).

In reference to claim 81, Long discloses a output device is at least one speaker (32).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 80, 82-90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Long (U.S Patent No 5,793,281) in view of Gillespie (U.S Patent No 6,250,001) as applied to claims 75-79 and 81 and further in view of Giraud (U.S Patent No. 5,966,696).

In reference to claim 80, the combination of Long and Gillespie does not disclose the first signal being generated when the sensor does not sense motion and the second signal being generated when the sensor senses motion. Giraud discloses a system for tracking consumer exposure for advertising. The system functions in either one of an idle mode when the potential

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consumer are not within a sensed proximity range or zone, i.e.: the sensor does not sense motion, and an active mode, i.e.: when sensor senses motion, to provide first signal and second signal for provide different advertising messages (col. 4, lines 13-20).

It would have been obvious for one of ordinary skill in the art at the time of the invention to modify the combination of Long and Gillespie to generate first signal when the sensor does not sense motion and second signal when the sensor senses motion as taught by Giraud because it would provide different control signals for appropriate advertising messages to consumers for increasing sales of the advertised products.

In reference to claim 82, the combination of Long and Gillespie does not disclose the system using the direct current power source to power the controller. Giraud discloses the controller of the system is use direct current source to power the controller as claimed.

It would have been obvious for one of ordinary skill in the art at the time of the invention to provide the direct current power source to power the controller in the combination of Long and Gillespie for protecting the components of the advertising system suffer damage due to excessive power levels (co. 4, lines 7-10).

In reference to claim 83, the combination of Long and Gillespie does not disclose the floor display is illuminated. Giraud discloses the display system for exposing, i.e.: illuminating, to a number of different advertisements or promotion segments (col. 3, lines 29-35).

It would have been obvious for one of ordinary skill in the art at the time of the invention to modify the display of the combination of Long and Gillespie to for display to a number of different advertisements or promotion segment because it would provide an display system attracting customers with multiple advertising messages to increase sales.

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In reference to claims 84-85, Giraud discloses memory 36 for storing instructions for information instructions for displaying different patterns according to the signals from the sensor (col. 4, lines 13-34).

In reference to claim 86, refer to the rejection as applied to claim 80.

In reference to claims 87-89, Long discloses the sensor may consist of other known traffic sensing devices such as floor mats (col. 2, lines 45-47)

In reference to claim 90, Giraud disclose the LCD is rectangular (Fig. 2).

7. Claim 91 is rejected under 35 U.S.C. 103(a) as being unpatentable over Long (U.S Patent No 5,793,281) in view of Gillespie (U.S Patent No 6,250,001) as applied to claims 75-79 and 81 and further in view of Blotky et al. (U.S Patent No.6,762,734).

In reference to claim 91, Long discloses the system comprising and controller computer 36 for inputting new memory instruction into the memory storage. Long does not discloses the input device being electrical communication with the controller. Blotky discloses to improve the dynamic of the display sound or other data may be transferred between the device and external source. The transfer of data may be automatic or it may be triggered, for example by an appropriate sensor such as sensors 52, 54, 56 or by activating another switch provided for this purpose. The addition of the external interface could serve multiple purposes. For example, a user can generate an image or sound file on his computer (not shown), or download it, for example from the Internet, and then transmit it to the microprocessor 44 via interface 62. The interface 62 can then store this file in the memory 46. Similarly, data could be transferred from the container 10 to an external source 62 in response to an advertisement displayed on the container 10 activated by an appropriate sensor such as the stress sensor 54.

It would have been obvious for one of ordinary skill in the art at the time of the invention to provide the input device for transfer data between the advertising system and the external source and store new data into the system memory in the combination of Long and Gillespie as taught by Blotky to improve the dynamic nature of the advertising system (col. 3, lines 31-35 of Blotky)

8. Claim 92 is rejected under 35 U.S.C. 103(a) as being unpatentable over Long (U.S. Patent No 5,793,281) in view of Gillespie (U.S. Patent No 6,250,001) in view of Giraud (U.S. Patent No. 5,966,696) as applied to claims 75-90 and further in view of Blotky et al. (U.S. Patent No. 6,762,734).

In reference to claim 92, refer to the rejections as applied to claims 75-91. Accordingly, the combination of Long, Gillespie and Giraud discloses everything except an input device for inputting new memory instructions into the memory for storage, the input device being electrical communication with the controller. Blotky discloses to improve the dynamic of the display sound or other data may be transferred between the device and external source. The transfer of data may be automatic or it may be triggered, for example by an appropriate sensor such as sensors 52, 54, 56 or by activating another switch provided for this purpose. The addition of the external interface could serve multiple purposes. For example, a user can generate an image or sound file on his computer (not shown), or download it, for example from the Internet, and then transmit it to the microprocessor 44 via interface 62. The interface 62 can then store this file in the memory 46. Similarly, data could be transferred from the container 10 to an external source

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62 in response to an advertisement displayed on the container 10 activated by an appropriate sensor such as the stress sensor 54.

It would have been obvious for one of ordinary skill in the art at the time of the invention to provide the input device for transfer data between the advertising system and the external source and store new data into the system memory in the combination of Long and Gillespie as taught by Blotky to improve the dynamic nature of the advertising system (col. 3, lines 31-35 of Blotky).

Response to Arguments

9. Applicant's arguments with respect to claims 75-92 have been considered but are moot in view of the new ground(s) of rejection.

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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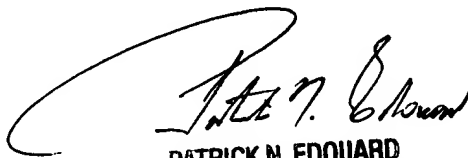
Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DUC Q. DINH whose telephone number is (571) 272-7686. The examiner can normally be reached on Mon-Fri from 8:00.AM-4:00.PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edouard Patrick can be reached on (571) 272-7603. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DUC Q DINH
Examiner
Art Unit 2674



PATRICK N. EDOUARD
SUPERVISORY PATENT EXAMINER

DQD
February 2, 2006